Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

_____♦_____

HARRY VINSON; BRAD VINSON
Petitioners

v.

DOROTHY WINSTON COLOM

Respondent

_____♦_____

On Petition For Writ Of Certiorari To The
United States Court of Appeals For
The Fifth Circuit

_____♦_____

PETITION FOR WRIT OF CERTIORARI

_____♦_____

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in propria persona

18 pp

QUESTION PRESENTED

Is a state judge, whose actions are absent jurisdiction, entitled to have a 42 USC §1983 action dismissed pursuant to Federal Rules of Civil Procedure 12(b)(6) and the Rooker-Feldman Doctrine?

Did the Federal District Court depart so greatly from established Federal Rules of Civil Procedure and controlling United States Supreme Court case law requiring the United States Supreme Court to exercise its supervisory power?

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PETITION FOR WRIT OF CERTIORARI

Petitioners Harry Vinson and Brad Vinson prays that a writ of certiorari issue to review the judgment of The Federal District Court and The Fifth Circuit Court of Appeals issued on 24 July 2000 denying Petitioners petition for rehear concerning civil rights violations under 42 USC § 1983 in particular U.S. Constitution Article I Section 10, laws impairing obligation of contracts, U.S. Constitution Article I, religious rights and U.S. Constitution Bill of Rights Fourteenth Amendment, equal protection of the laws.

OPINIONS BELOW

IN RE: *Harry Vinson; Brad Vinson vs. Dorothy Colom*, United States District Court For The Northern District of Mississippi Eastern Division, 6 October 1999 Memorandum opinion and order to dismiss. [App. 1 - 4]

IN RE: *Harry Vinson; Brad Vinson vs Dorothy Colom*, Fifth Circuit Court of Appeals, 16 June, 1999 affirming district courts judgment. [App. 5 - 6]

IN RE: *Harry Vinson; Brad Vinson vs. Dorothy Colom*, Fifth Circuit Court of Appeals, 24 July 2000 denying petition for rehear. [App. 7]

JURISDICTION

The Fifth Circuit Court of Appeals entered an order 24 July 2000 and Petitioner's petition for rehearing was denied June 22, 2000. The Petition for Writ of Certiorari was timely filed 20 October 2000. The jurisdiction of this court is invoked under USC § 1251(b)(2); U.S.A. Constitution Article III Section 2, *"in all cases...in which a state shall be party"*; Supreme Court of The United States Rule 10(a).

CONSTITUTIONAL PROVISIONS

USA Constitution Article I Section 10
"impairing contracts"

USA Constitution Bill of Rights
AMENDMENT I...
"Religious Rights"
AMENDMENT XIV ...
"due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

USA Constitution Article III §2...
"The judicial power shall extend to all cases, in law and equity arising under the Constitution, the laws of the United States and those in which a state shall be party".

STATEMENT OF THE CASE

This case involves violations of the Petitioners' Constitutional Rights brought under 42 USC §1983 for the violations of Petitioners' U.S. Constitution Article I Section 10; Bill of Rights Article I (religion) and Bill of Rights Fourteenth Amendment (due process and equal protection of the laws). Complaint was filed in the U S District Court For The Northern District of Mississippi with summons and complaint being served upon the defendant. Complaint was drafted pursuant to Fed.R.Civ.P. Rule 8(a) with Respondent responding pursuant to Fed.R.Civ.P. Rule 8(b). Petitioners filed discovery (admissions and productions) and served upon Respondent. Respondent filed a Motion To Dismiss pursuant to Fed.R.Civ.P. Rule 12(b)(6), failure to state a claim, but did not show a failure to state a claim. Petitioners timely responded to Motion To Dismiss followed by request for admissions and productions of documents pursuant to Fed.R.Civ.P. Rule 26 -37. Respondent filed a Motion to Stay all discovery which was granted prior to the ten day response time allowed by the Fed.R.Civ.P. for Petitioners to respond. Petitioners timely filed a response and objection to motion to stay discovery, within the time allowed by the rules of court. Petitioners appealed the stay of all discovery by the magistrate to the US Federal District Judge. With motions, objections, and discovery pending, the Federal District Judge abruptly dismissed the complaint pursuant to Fed.R.Civ.P. Rule 12(b)(6), failure to state a claim. Petition to reconsider and set aside order was denied which was appealed to the U.S.

Court of Appeals for The Fifth Circuit.

On appeal, the Appellant Court affirmed the district court's dismissal not on Fed.R.Civ.P. Rule 12(b)(6) but for lack of subject mater jurisdiction.

A Petition to Rehear was denied.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT:

Petitioners enjoy rights pursuant to the Constitution of the United States, which when violated have secured remedies pursuant to the Act of Congress, 42 USC § 1983. Those rights include the filing of complaint and discovery to prove the complaint pursuant to Fed.R.Civ.P. Rule 26 - 37, rules of evidence, jury trial, and due process and equal protection of the law. Complaint was arbitrarily dismissed without benefit of constitutional, congressional and Supreme Court Mandates, both case law and rules of procedure.

B. ARGUMENT:

Petitioners filed a 42 USC §1983 complaint against the Respondent for violations of secured rights. These violations occurred from the Respondent's issuance of a temporary order in a cause of action that was on appeal, therefore eliminating any alleged judicial immunity because of absent of jurisdiction/authority, Martin v U.S., 263 F. 2d 516, Elfman Motors Inc v Chrysler

Corp., 567 F. 2d 1252, Foster v White, 484 U.S. 219.

Stump v Sparkman, 435 U.S. 349, Mirelles v Waco, 112 SCT 286, the alleged temporary order was issued without jurisdiction or authority thereby making the Rooker-Feldman Doctrine not applicable.

Petitioners filed a valid complaint upon which relief could be granted, Fed.R.Civ.P. Rule 8(a) and Conley v Gibson, 355 U.S. 41. Respondent responded to complaint pursuant to Fed.R.Civ.P. Rule 8(b) admitting and denying the averments in complaint, thereby creating genuine issues of disputed material facts for a jury to decide. Respondent filed a Motion To Dismiss pursuant to Fed.R.Civ.P. Rule 12(b)(6) for failure to state a claim which was overcome through the Petitioners response and objections, which further created genuine of disputed material facts. Petitioners served discovery request upon Respondent pursuant to Fed.R.Civ.P. Rules 26 - 37. Defendant did not respond to the discovery request. Defendant asked for and received a stay of all discovery in violation of Petitioners' rights under Fed.R.Civ.P. Rules 26 - 37, Hanna v Plumber, 380 U.S. 460, and Conley v Gibson 355 U.S. 41. Petitioners appealed the stay of all discovery to the U.S. Federal District Judge and he never ruled upon the discovery issue but dismissed the case pursuant to Fed.R.Civ.P. Rule 12 (b)(6), failure to state a claim. Complaint stated a claim as it complained of constitutional violations, Bell v Hood, 327 U.S. 678.

Petitioners timely perfected an appeal to the Fifth Circuit Court of Appeals which affirmed the lower court's judgment but on different grounds, lack of subject matter jurisdiction referring to Rooker-Feldman Doctrine. However the courts have ruled Rooker-Feldman Doctrine does not apply to temporary orders.

As shown, both the Federal District Court and the Court of Appeals totally disregarded the Fed.R.Civ.P., congressional acts, constitutional guarantees and controlling U.S. Supreme Court Case law, thereby denying Petitioners due process and equal protection of the laws in prosecuting their complaint.

The departures by the Federal District Court and Appeals Court are so contrary to the superior authorities, it requires the supervisory power of the Supreme Court of The United States of America to correct the actions of the lower courts.

CONCLUSION

For all the foregoing reasons The Supreme Court of The United States should grant the writ of certiorari as it has jurisdiction under the Constitution of The United States Article III Section 2 and the Bill of Rights XIV Amendment.

Respectfully submitted,
Harry Vinson; Brad Vinson
P. O. Box 791
New Albany, MS 38652

In The United States District Court
For The Northern District of Mississippi
Eastern Division

HARRY VINSON; BRAD VINSON
PLAINTIFFS

vs. Civil Action No. 1:99CV062-B-D

DOROTHY COLOM DEFENDANT

Memorandum Opinion

This matter comes before the court upon the defendant's motions to dismiss. Upon Due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

On November 18, 1998, Chancery Court Judge Dorothy Colom entered a final decree in cause numbers 96-0078 and 96-1110, in the Chancery Court of Lee County, Mississippi.[1] The plaintiffs timely perfected their appeal to the Mississippi Supreme Court on or about December 9, 1998.

On February 2 and 3, 1999, Judge Colom presided over a hearing in which Kernith Vinson, the mother of Harry Vinson and the grandmother of Brad Vinson, was seeking a temporary restraining order and preliminary injunction against Harry and Brad Vinson. The purpose of Mrs. Vinson's petition was to prohibit the plaintiffs from taking any actions concerning Woodrow W. Vinson, the father of Harry Vinson and grandfather of Brad Vinson. Upon Conclusion of the hearing, Judge Colom granted the preliminary injunction sought by Mrs. Vinson.[2]

As a result of the preliminary injunction, the plaintiffs allege that they were harassed when they attempted to visit Woodrow Vinson in his hospital rooms, they suffered business and financial harm, and emotional distress. On March 4, 1999 the plaintiffs filed this action against Judge Colom, alleging violations of their "United States of America Constitutional Rights, and Civil Rights, and Title 42 §1983, under the Constitution of the United States of America and the laws made in pursuance thereof, and under Federal Rules of Civil Procedure, FRCP Rule 8(a), violations of the USA Const. Art. I §10 "laws impairing the Obligations of Contracts", violations of USA Const.Art I Bill of Rights, i.e. Religious Rights, and violations of USA Const. Art XIV "Equal protection of the laws,"[3] and seeking damages in excess of 12,000,000.00 dollars.

LAW

The defendant's motion is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In considering a motion under Rule12(b)(6), the district court must accept all well-pleaded facts as true and view in the light most favorable to the plaintiff. Baker v Putnal, 75 F. 3d 190, 196 (5th Cir. 1996). Dismissal is not appropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Doe v Hillsboro Indep. Sch .Dist., 81 F.3d 1395, 1401-1402 (5th Cir. 1996).

Judicial immunity is a well established principle of American Jurisprudence. Brinkman v Johnston, 793 F.2d 111, 112 (5th Cir. 1986); Stump v Sparkman, 435 U.S. 349, 362-64, 98 S. Ct. 1099, 1107-1109, 55 L. Ed. 2d 331 (1978).

Judicial immunity may only be overcome if it can be shown that a judge's action was either not judicial in nature or that it was outside the judge's judicial capacity, or that a judicial action was taken absent jurisdiction. Stump v Sparkman, 435 U.S. at 356-57; Forrester v White, 484 U.S. 219, 227-29, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988). The Court finds that Judge Colom's action were at all times within the scope of her judicial duties and thus she is absolutely immune from suit.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motions to dismiss should be GRANTED.

An order will issue accordingly.

THIS, the 6 day of October, 1999.

/s/

Neal B. Biggers, Jr
Chief Judge

File date 8 Oct. 1999

[1] Judge Colom is the Chancellor for the Fourteenth Chancery Court District of Mississippi, which does not include Lee County, Mississippi. Lee County is in the First Chancery Court District. Judge Colom was specially appointed by the Mississippi Supreme Court to preside over these referenced Lee County Cases, which were ultimately consolidated. The plaintiffs were parties to both of the referenced cases.

[2] By Chancery Court Order dated February 4, 1999, Harry and Brad Vinson were enjoined from:

1. Taking further action of any kind using any power of attorney or other document executed by Woodrow W. Vinson.

2. Taking any action of any kind to prohibit or prevent Kernith B. Vinson, Rita K. Vinson or any other family member or friends from visiting with Woodrow W. Vinson while he is hospitalized.

3. From acquiring or attempting to acquire signatures on any legal or other type of document from either Woodrow W. Vinson or Kernith B. Vinson.

4. Transferring, withdrawing, disposing of or dealing with in any way any funds belonging to Woodrow W. Vinson or Kernith B. Vinson, since November 18, 1998.

5. Taking any action that would in any way effect any real or personal property or other assets belonging to Woodrow W. Vinson or Kernith B Vinson since November 18, 1998.

Harry Vinson was further enjoined from preventing Woodrow W. Vinson from

returning to his home upon his release from the hospital.

[3] See plaintiff's complaint, page 1.

In The United States Court of Appeals
For The Fifth Circuit

No. 99-60825
Conference Calendar

HARRY VINSON; BRAD VINSON
Plaintiffs-Appellants

versus

DOROTHY WINSTON COLOM,
Defendant-Appellee

Appeal from the United States District Court
for The Northern District of Mississippi
USDC No. 1:99-CV-62-B-D

Before JOLLY, DAVIS, and DUHE, Circuit Judges.

PER CURIAM:*

Harry W. Vinson and Brad Vinson ("the Vinsons") appeal the district court's Fed.R.Civ.P. Rule 12(b)(6) dismissal of their claims against Dorothy Winston Colom ("Colom"), a Mississippi Chancery Court Judge. The Vinsons' 42 U.S.C. §1983 complaint alleged that Colom had violated the Vinsons' constitutional rights by issuing a preliminary injunction order in a Chancery-court Case.

"Federal courts, both trial and appellate, have a continuing obligation to examine the basis for their jurisdictions." MCG, Inc. v Great W. Energy Corp., 896 F. 2d 170, 173 (5th Cir. 1990).

"The issue may be raised by parties, or by the court sua sponte at any time." Id.

Federal district courts lack jurisdiciton to engage in appellate review of state-court judgments. See Dist. of Columbia Court of Appeals v Feldman, 460 U.S. 462, 476, 482 (1983); Rooker v Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). "Constitutional questions arising in state proceedings are to be resolved by the state courts." Liedtke v State Bar of Tex., 18 F. 3d 315, 317 (5th Cir. 1994). The constitutional issues presented in the Vinsons' §1983 action are inextricably intertwined with the Chancery Court's preliminary injunction order. Accordingly, the Vinsons' action constituted a request that the district court review a state-court decision. See United States v Shepherd, 23 F. 3d 923, 924 (5th Cir. 1994).

In light of the foregoing, the judgment of the district court is affirmed on the ground of lack of subject-matter jurisdiction. See Sojourner T v Edwards, 974 F. 2d 27, 30 (5th Cir. 1992) (court of appeals may affirm district court's judgment on any basis supported by the record).

AFFIRMED.

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.5

file date 16 June 2000

In The United States Court of Appeals
For The Fifth Circuit

No. 99-60825

HARRY VINSON; BRAD VINSON
Plaintiffs-Appellants

versus

DOROTHY WINSTON COLOM,
Defendant-Appellee

Appeal from the United States District Court
for The Northern District of Mississippi
USDC No. 1:99-CV-62-B-D

Before JOLLY, DAVIS, and DUHE, Circuit Judges.

IT IS ORDERED that the petition for rehearing is DENIED.

FOR THE COURT

/s/
W. Eugene Davis
United States Circuit Judge

file date 24 July 2000